

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NATALIE O.

Petitioner,

vs.

VALLEY MOUNTAIN REGIONAL
CENTER,

Service Agency.

OAH No. 2006010302

DECISION

Administrative Law Judge Robert Walker, State of California, Office of Administrative Hearings, heard this matter in Modesto, California, on February 1, 2006.

Anthony Hill, Assistant Director of Case Management, represented Valley Mountain Regional Center.

Lucy T., Petitioner's mother, represented the petitioner, Natalie O.

The record was held open for 20 days to permit the parties to present additional documentary evidence. Regional center submitted a letter dated February 2, 2006, from Hill to Walker, which was marked as Exhibit R 11, and a proof of service by mail dated February 2, 2006, concerning documents mailed on January 26, 2006. The proof of service was marked as Exhibit R12. Petitioner submitted a letter dated February 8, 2006, from Lucy T. to Walker with a number of attachments. The latter and attachments were marked as Exhibit C 5. No other documents were received, and the record was closed on February 21, 2006.

ISSUE

Is petitioner entitled to have regional center provide her with speech and language services.

FACTUAL FINDINGS

ISSUE REGARDING REGIONAL CENTER'S EXHIBITS

1. Petitioner's mother objected to certain regional center exhibits being received in evidence. She believed regional center had failed to provide her with copies of them as required by section 4712(d) of the Lanterman Act.¹ She objected to exhibits R 2, R 3, R 4, R 6, R 8, and R 9. Counsel for regional center requested an opportunity to attempt to prove that they had been sent. The undersigned judge reserved ruling on regional center's request that those exhibits be received in evidence and gave the parties 20 days to submit evidence regarding whether regional center had mailed the documents.

2. Regional center's exhibit R 12 is a February 2, 2006, proof of service by Laurie Evans in which she declares that she mailed copies of those exhibits on January 26, 2006. Ms. Evans did not execute this proof of service until after petitioner's mother raised an issue as to whether the documents had been mailed.

3. Petitioner's mother acknowledges that she received an envelope from regional center on January 27, 2006. And she submitted a copy of the envelope she received. But her recollection is that it contained only a one-page document.

4. The envelope, however, has \$4.64 in postage on it. It is not believable that regional center would have put that much postage on an envelope with only one page in it.

5. It is found that petitioner's mother must have been mistaken as to what was in that envelope. It is found that Ms. Evans mailed the exhibits to petitioner's mother.

6. Regional center's request that those exhibits be received in evidence is granted.

BACKGROUND

7. Petitioner, Natalie O., was born on February 27, 2003. On February 27, 2005, petitioner was assessed, and it was determined that she qualified for Special Education services because of a developmental delay.

8. On April 29, 2005, Mary Alice Susca, M.A., CCC-SLP, of Kaiser Permanente assessed petitioner and found her to have receptive language skills in a profoundly delayed range. Ms. Susca also found petitioner to have expressive language skills in the moderately delayed range.

¹ The Lanterman Developmental Disabilities Services Act begins at section 4400 of the Welfare and Institutions Code.

9. On June 7, 2005, regional center began paying More Than Words, a speech and language pathology service, to provide speech therapy for petitioner. Regional center provided that service pursuant to the Early Start program. Angela Taylor, M.S., CCC-SLP is the More Than Words therapist who worked with petitioner.

THE CURRENT LEVEL OF PETITIONER'S SPEECH AND LANGUAGE SKILLS

10. On September 26, 2005, Kelli Sharpe, petitioner's service coordinator at regional center, evaluated petitioner using a Western Psychological Services developmental profile. Petitioner was 31 months old. Regarding self-help, Ms. Sharpe scored petitioner at one month below her chronological age. Concerning physical, social, academic, and communications skills, Ms. Sharpe scored petitioner at one month above her chronological age.

11. In a report dated November 27, 2005, Ms. Taylor, petitioner's speech therapist, noted that, from June 7, 2005, to November 27, 2005, More Than Words provided petitioner with 22 sessions of speech therapy. Ms. Taylor also reported the results of assessments she had done based on standardized tests. Ms. Taylor's assessments showed that, as of October of 2005, petitioner had made significant gains and was functioning at an age appropriate level in both receptive and expressive language.

12. By a notice of proposed action dated December 12, 2005, regional center notified petitioner that regional center intended to discontinue the speech therapy it had been providing. Petitioner's mother appealed, and the hearing in this matter followed.

13. Between the time petitioner's mother appealed and the date of the hearing, there were additional assessments.

14. On January 17, 2006, Carrie Findley, an infant and toddler teacher with the Margaret Annear School, assessed petitioner with a learning accomplishment profile. On pre-writing skills, petitioner tested at her age level. On gross motor, fine motor, cognitive, language, self help, and personal social skills, petitioner tested above her age level.

15. On January 19, 2006, Deborah Hoagland administered the Stanford Binet Intelligence Scale – 4th edition and the Test of Visual-Motor Integration to petitioner. Ms. Hoagland concluded that petitioner was functioning within the average range cognitively.

16. On January 23, 2006, Sarah L. Seward of Kaiser Permanente observed petitioner and interviewed petitioner's mother. Based primarily on the interview, Ms. Seward wrote a report in which she said that petitioner, "presents with receptive and expressive language delays of 30% in comparison to her chronological age. Child would likely benefit from continued speech and language intervention services." Ms. Seward recommended that petitioner's parents seek further speech and language evaluation from the regional center and from petitioner's school district.

17. January 27, 2006, Carrie Findley assessed petitioner with a Learning Accomplishment Profile. Petitioner was 35 months old. Ms. Findley's assessment showed that petitioner was at her age level in pre writing skills. It showed that she was above her age level in gross motor, fine motor, cognitive, language, self help, and personal – social.

TESTIMONY OF WITNESSES

18. At the hearing in this matter, petitioner's mother testified. The following is a paraphrased summary of her testimony. One can not rely on Ms. Taylor's assessment because petitioner's mother and Ms. Taylor have not had a good relationship from the start. The results of Ms. Taylor's purported tests are not reliable because petitioner did not understand Ms. Taylor. Petitioner's vocabulary and comprehension are both very low. Petitioner's mother testified, further, that the thing that worries her most is petitioner's exhaling as she talks.

19. Ms. Taylor, who holds a masters degree in speech therapy, testified. She has practiced speech therapy for four years and worked with petitioner for almost six months. Ms. Taylor testified that a child who is reared in a bilingual home may lag behind other children until he or she starts to school but usually catches up with other children shortly after starting to school. Petitioner, however, no longer lags behind. Her skills now compare favorably with what one expects of children her age.

20. Erin Keeney, M.S., CCC-SLP, Ms. Taylor's supervisor at More Than Words, also testified. She testified regarding petitioner's mother's concern over petitioner's exhaling as she talks. Ms. Keeney testified that the phenomenon petitioner's mother described is a lateral lisp. Ms. Keeney testified that usually a child stops that behavior by the time he or she is five years old. If the behavior continues past five there is a reason to have a therapist intervene, but there is no reason for intervention before a child is five.

21. Ms. Keeney also noted that, in Ms. Seward's report for Kaiser, Ms. Seward is identified only as an "examiner" and that there is no indication that she has a speech or language credential. And Ms. Taylor testified that parent interviews, such as the one on which Ms. Seward based her recommendation, are not as reliable as standardized tests.

LEGAL CONCLUSIONS

1. "Early Start" is the common name of a federal program to provide services for infants and toddlers at risk for certain disabilities. The controlling federal law is Subchapter III of the Individuals with Disabilities Education Act (IDEA).² The federal law provides states with an opportunity to receive federal funds for services to certain children 36 months of age and younger. As a condition of receiving federal funds, states must agree to comply

² 20 U.S.C. § 1431 *et.seq.* Implementing regulations are found in volume 34 of the Code of Federal Regulations beginning at section 303.

with federal rules and regulations. California chose to participate. California's implementing legislation is the California Early Intervention Services Act.³ That act must be interpreted and applied so that the California Early Start program complies with federal law.

2. By reason of the matters set forth in Findings 10, 11, and 14 through 21, it is determined that petitioner is no longer at risk for any disability related to her speech and language skills.

3. One is eligible for regional center services pursuant to the Lanterman Act if one is developmentally disabled. And those services are not limited to children who are under three years old. The Lanterman Act defines developmental disability.

"Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.⁴

4. There is no evidence that petitioner might be entitled to regional center services under the eligibility categories specified in the Lanterman Act.

ORDER

Petitioner's appeal from regional center's notice of proposed action is denied.

DATED: March 1, 2006

ROBERT WALKER
Administrative Law Judge

³ Gov. Code § 95000 *et seq.* Implementing regulations are found in title 17 of the California Code of Regulations beginning at section 52000.

⁴ Welf. & Inst. Code, § 4512(a).

Office of Administrative Hearings